

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

CORINA MENDOZA

PLAINTIFF

V.

4:14CV00426 JM

**WIS INTERNATIONAL, INC. and
ANTHONY ADAMS
WASHINGTON INVENTORY SERVICES, INC.**

DEFENDANTS

CERTIFICATION ORDER

Pursuant to Rule 6-8 of the Rules of the Supreme Court of the State of Arkansas, this Court certifies to the Supreme Court of Arkansas a question of law that may be determinative of this case and as to which it appears there is no controlling precedent in the decisions of the Supreme Court of Arkansas.

I.

QUESTION OF LAW TO BE ANSWERED

Under the facts of this case, whether the provisions of Ark. Code Ann. §27-37-703, which restricts the admissibility of seat-belt-nonuse evidence in civil actions, violates the separation of powers doctrine found in Article IV, Section 2 of the Arkansas Constitution.

II.

FACTS RELEVANT TO THE QUESTION

This case arises out of a car accident that occurred on August 1, 2011 on Interstate 630 in Little Rock. Plaintiff was a passenger in the backseat of a vehicle operated by Defendant Anthony Adams when Adams fell asleep at the wheel and ran into the back of a parked

excavator. She has filed a complaint seeking damages for significant and permanent personal injury. Plaintiff further alleges that Adams was in the course and scope of his employment with Defendants WIS International, Inc. and Washington Inventory Services, Inc. (collectively “WIS”) at the time of the accident. Defendants have answered and plead the affirmative defense of comparative fault, specifically including Plaintiff’s failure to wear a seat belt at the time of the accident.

Both WIS and Adams have filed motions challenging the constitutionality of Ark. Code Ann. § 27-37-703 on the basis that this statute purports to limit or otherwise dictate what evidence is admissible at trial and is, therefore, unconstitutional. Defendants’ arguments are based on Article IV, §2 and Amendment 80, §3 of the Arkansas Constitution. Plaintiff responded, and WIS filed a reply. A hearing was held on these motions on August 20, 2015, and the Court announced its decision to certify this question to the Arkansas Supreme Court. A jury trial is currently scheduled to begin on April 4, 2016.

This issue is likely to arise in federal diversity cases as well as in Arkansas circuit court cases. It appears to the Court that there is no controlling precedent in the decisions of the Arkansas Supreme Court on this issue.

III. REFORMULATION OF THE QUESTION

The United States District Court hereby acknowledges that the Arkansas Supreme Court, acting as the receiving court, may reformulate the question presented.

IV. COUNSEL OF RECORD AND PARTIES

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V.

The Clerk of this Court is hereby directed to forward this Order to the Supreme Court of

Arkansas under his official seal.

It is so ordered this 20th day of August, 2015.

A handwritten signature in black ink, appearing to read "J. M. Moody Jr.", is positioned above a horizontal line.

HONORABLE JAMES M. MOODY JR.
United States District Judge